

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

<b>JARRAID ROGERS, ID # 1847726,</b>	)	
<b>Petitioner,</b>	)	
<b>vs.</b>	)	<b>No. 3:15-CV-3328-D (BH)</b>
	)	
<b>LORIE DAVIS, Director,</b>	)	<b>Referred to U.S. Magistrate Judge</b>
<b>Texas Department of Criminal</b>	)	
<b>Justice, Correctional Institutions Division,</b>	)	
<b>Respondent.</b>	)	

**FINDINGS, CONCLUSIONS, AND RECOMMENDATION**

By Amended Miscellaneous Order No. 6 (adopted by Special Order No. 2-59 on May 5, 2005), requests to proceed *in forma pauperis* on appeal are automatically referred. Before the Court is the post-judgment *Plaintiff Jarraid Rogers Affidavit of Indigence*, and a certificate of inmate trust account, received March 20, 2018 (doc. 33).

**I. MOTION TO EXTEND TIME TO APPEAL**

Jarraid Rogers (Petitioner) filed a habeas petition under 28 U.S.C. § 2254 that was denied by judgment entered on January 30, 2018. (*See* doc. 30.) His filing states that he wishes to pursue a certificate of appealability in the United States Court of Appeals for the Fifth Circuit.

“An appeal must not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice.” Fed. R. App. P. Rule 3(c)(4). The filing clearly expresses Petitioner’s intent to appeal, and it should be construed as a notice of appeal.

Petitioner’s notice of appeal from the judgment was due on March 1, 2018, which was thirty days after the entry of the judgment. *See* Fed. R. App. P. 4(a)(1)(A). The time to appeal may be extended up to thirty days if a party moves for an extension of time within thirty days of the time to appeal and shows excusable neglect or good cause. Fed. R. App. P. 4(a)(5). Because the notice

of appeal was filed within thirty days after it was due, it is also construed as a motion for extension of time to file the notice of appeal. Petitioner has not shown excusable neglect or good cause for extending the time to appeal, however, so any motion for extension of time to appeal should be denied.

## **II. *IN FORMA PAUPERIS* ON APPEAL**

Petitioner's filing also seeks leave to proceed *in forma pauperis*. Because Petitioner's notice of appeal is untimely, the appeal is not taken in good faith under 28 U.S.C. § 1915(a)(3). *See Evans v. Sims*, 534 Fed. App'x 228 (5th Cir. 2013) (per curiam). His request to proceed *in forma pauperis* on appeal should be denied.

## **III. RECOMMENDATION**

Petitioner's filing should be construed as a notice of appeal, motion for extension of time to file a notice of appeal, and a motion for leave to proceed *in forma pauperis* on appeal. The motions for extension of time to appeal and to proceed *in forma pauperis* on appeal should be **DENIED**.

**SIGNED on this 21st day of March, 2018.**

  
IRMA CARRILLO RAMIREZ  
UNITED STATES MAGISTRATE JUDGE

**INSTRUCTIONS FOR SERVICE AND  
NOTICE OF RIGHT TO APPEAL/OBJECT**

A copy of these findings, conclusions and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of these findings, conclusions and recommendation must file specific written objections within 14 days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's findings, conclusions and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Servs. Automobile Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996).

  
IRMA CARRILLO RAMIREZ  
UNITED STATES MAGISTRATE JUDGE